

GAHC040006082024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/188/2024

Jambey Tsering
Son of Late Lama Dorjee, a resident of Gyangkhar Village, PO Lemberdung PS and
District Tawang, Arunachal Pradesh

VERSUS

The State of AP and 2 Ors
represented by the Secretary, Department of Land Management, Govt of Arunachal
Pradesh, Itanagar

2:The Deputy Commisisoner
Age: 0
Occupation :
Govt of Arunachal Pradesh
Zhitro Tse
Tawang District
Arunachal Pradesh

3:The Additional Deputy Commissioner cum Estate Officer
Age: 0
Occupation :
Govt of Arunachal Pradesh
Zhitro Tse
Tawang District
Arunachal Prades

Advocate for the Petitioner : Gallen Taloh

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

Date : 13.05.2024

Heard learned Senior counsel Mr. D. Mazumdar for the petitioner.

2. The petitioner has filed this application under Article 226 of the Constitution of India praying for issuance of writ in the nature of Certiorari or any other appropriate writ for quashing and setting aside the Notice No. TLR-07/2018(Part-D)/5410-16 dated 11.10.2023, TLR-07/2018(Part-D) dated 20.11.2023 & TLR-68/2019(Vol-I)/590-95 dated 07.05.2024 issued by the respondent No. 3. The petitioner has also prayed for interim relief to suspend the operation of the aforementioned Notices and allow him to continue with the construction of the retaining wall on his plot of land, in public interest.

3. Heard Mr. R. H. Nabam, learned Additional Advocate General for the respondent Nos. 1 & 2 and Ms. P. Pangu, learned Government Advocate for the respondent No. 3.

4. It is submitted that the petitioner has been in possession of a plot of land near Circuit House, Tawang since 2010, but in the year 2015, impugned notice was issued on 08.10.2015 under the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupant) Act' 2003, (herein after referred to Act of 2003). A final order dated 18.06.2019 vis-à-vis eviction order was passed by the respondent No. 3. Against the eviction order dated 18.06.2019, the petitioner has filed an appeal under Section 12 of the Arunachal Pradesh Public Premises

(Eviction of unauthorized Occupant) Act' 2003 on 16.07.2019. It is averred that despite conclusive adjudication at the level of the Estate Officer and non-conclusive adjudication of the appeal against the order, the petitioner received the impugned notice dated 11.10.2023 in the month of October, whereby the respondent No. 3 directed the petitioner to cease construction on his plot of land located near New Circuit House, Tawang. Thereafter, the second impugned notice dated 20.11.2023 was issued and the petitioner was directed to remove/dismantle his construction. The petitioner on 04.12.2023 submitted his reply to the respondent No. 3 apprising him that the final order dated 18.06.2019 was already passed by the respondent No. 3 and that an appeal is pending before the respondent No. 2.

5. It is submitted that, after submission of his reply, the petitioner was under the impression that the matter has been resolved, but he received the 3rd impugned notice dated 07.05.2024, as his reply was found to be unsatisfactory, and the direction under Section 5 & 7 of the Act' 2003 was passed to demolish and vacate the existing structure within 15(fifteen) days.

6. Appalled at the 3rd impugned notice, the petitioner submitted an entreaty, dated 10.05.2024, before the respondent No. 2 and requested for stay of the operation of impugned notices till disposal of the appeal, filed under Section 12 of the Act' 2003 against the eviction order dated 18.06.2019. However, the respondent No. 2 did not pass any order, rather an attempt is made to give effect to the impugned orders.

7. It is submitted on behalf of the petitioner that the impugned notices have

been illegally issued as the petitioner has preferred an appeal under Section 12 of the Act' 2003 against the order of eviction dated 18.06.2019 and the appeal is pending for disposal. Thus, notices as impugned by the petitioner are not tenable in law. The notices dated 07.05.2024 reveals that this facet was not at all considered by the respondent No. 3 and he issued notice after notices, despite pendency of the appeal before the respondent No. 2. The petitioner has also submitted his prayer to allow construction of the retaining wall on his plot of land as entire building may collapse, if the retaining wall is not constructed.

8. Mr. R. H. Nabam, learned Additional Advocate General has fairly submitted that if notices are issued during the pendency of the appeal, these notices are indeed untenable in law and he may be allowed to obtain instructions relating to the status of the appeal as well as the notices issued by the petitioner.

9. Considering the submissions made at the bar, the learned Additional Advocate General for the respondent Nos. 1 & 2 may submit report relating to the status of the pendency of the appeal and the impugned notices issued against the petitioner.

10. Meanwhile, the petitioner is directed to continue with the construction of the retaining wall only to prevent the structure from collapsing.

11. Since, the learned counsel for the respondent Nos. 1, 2 & 3 have entered appearance and accepted notice on behalf of the respondents, no formal notice is required to be issued to the said respondents. However, they shall be provided with requisite extra-copies of the petition during the course of the day, if not already furnished.

12. List the matter after 2(two) weeks for status report.

JUDGE

Comparing Assistant